



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 983

[Docket No. AMS-SC-17-0048; SC17-983-2 FIR]

Pistachios Grown in California, Arizona, and New Mexico;

Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture adopts as final, without change, an interim rule that implemented a recommendation from the Administrative Committee for Pistachios (Committee) to decrease the assessment rate established for the 2017-18 and subsequent production years and administrative revisions to the subpart headings to bring the language into conformance with the Office of Federal Register requirements.

DATES: Effective [INSERT DATE 1 DAY AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Peter Sommers, Marketing Specialist, or Jeffrey Smutny, Regional Director, California Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone:

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Small businesses may request information on complying with this and other marketing order regulations by viewing a guide at the following website:

<http://www.ams.usda.gov/rules-regulations/moa/small-businesses>; or by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Richard.Lower@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This rule is issued under Marketing Agreement and Order No. 983, both as amended (7 CFR part 983), regulating the handling of pistachios grown in California, Arizona, and New Mexico. Part 983 (referred to as the "Order") is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act." The Committee locally administers the Order and is comprised of growers and handlers of pistachios operating within the area of production, and a public member.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 13563 and 13175. This rule falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs'" (February 2, 2017).

Under the Order, pistachio handlers in California, Arizona, and New Mexico are subject to assessments, which provide funds to administer the Order. Assessment rates issued under the Order are intended to be applicable to all assessable pistachios for the entire production year, and continue indefinitely until amended, suspended, or terminated. The Committee's production year begins on September 1 and ends on August 31.

In an interim rule published in the *Federal Register* on October 24, 2017, and effective on October 24, 2017, (82 FR 49087, Doc No. AMS-SC-17-0048; SC17-983-2 IR), § 983.253 was amended by decreasing the assessment rate established for

pistachios grown in California, Arizona, and New Mexico for the 2017-18 and subsequent production years from \$0.0010 to \$0.0001 per pound of assessed weight pistachios handled. The decreased assessment rate allows the Committee to maintain their financial reserve at the limit specified under the Order while providing adequate funding to meet program expenses.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are 18 handlers subject to regulation under the order and approximately 1,236 producers of pistachios in the production area. Small agricultural service firms are defined by the Small Business Administration as those having

annual receipts of less than \$7,500,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000 (13 CFR 121.201).

Based on Committee data, it is estimated that about 50 percent of the handlers annually ship less than \$7,500,000 worth of pistachios. Nine of the 18 (50 percent) regulated handlers received enough pistachios at an average price of \$2.50 per pound to be considered large handlers, leaving the percentage of small handlers at 50 percent.

The National Agricultural Statistics Service (NASS) 2012 data on pistachio farm size indicates that there were 1,305 pistachio farms, of which 945, or 72 percent, were less than 100 acres. NASS 2016 annual production data indicates that the per-acre production of pistachios was 3,750 pounds. At an average value of \$1.68 per pound, each acre of pistachios could return \$6,300. In order for a producer to have \$750,000 in annual receipts, the producer would have to have at least 119 acres. Thus, about half the handlers and a majority of the producers in the production area may be classified as small entities.

This rule continues in effect the interim rule that decreased the assessment rate established and collected from handlers for the 2017-18 and subsequent production years from \$0.0010 to \$0.0001 per pound of pistachios handled.

The Committee unanimously recommended 2017-18 expenditures of \$672,900, and recommended an assessment rate of \$0.0001 per pound of assessed weight pistachios, by majority vote. The \$0.0001 assessment rate is \$0.0009 lower than the rate previously in effect. The quantity of assessable pistachios for the 2017-18 production year is estimated at 550 million pounds. Thus, the \$0.0001 rate should provide \$55,000 in assessment income. Income derived from handler's assessments, along with interest income, California Pistachio Research Board (CPRB) management income, and funds from the Committee's authorized reserve, will be adequate to cover expenses for the 2017-18 production year, while not adding to the financial reserve.

This rule continues in effect the action that decreased the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers.

Additionally, the Committee's meetings were widely publicized throughout the California, Arizona, and New Mexico pistachio industry, and all interested persons were invited to attend the meetings and encouraged to participate in Committee deliberations on all issues. Like all

Committee meetings, the July 10, 2017, and August 1, 2017, meetings were public meetings and all entities, both large and small, were able to express views on this issue.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581-0215, "Vegetable and Specialty Crop Marketing Orders." No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This action imposes no additional reporting or recordkeeping requirements on either small or large California, Arizona, and New Mexico pistachio handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Comments on the interim rule were required to be received on or before December, 26, 2017. No comments were received. Therefore, for reasons given in the interim rule, we are adopting the interim rule as a final rule, without change.

To view the interim rule, go to:

<https://www.regulations.gov/document?D=AMS-SC-17-0048>

This action also affirms information contained in the interim rule concerning Executive Orders 12866, 12988, 13175, 13563, and 13771; the Paperwork Reduction Act (44 U.S.C. Chapter 35); and the E-Gov Act (44 U.S.C. 101).

After consideration of all relevant material presented, it is found that finalizing the interim rule, without change, as published in the *Federal Register* (82 FR 49087 October 24, 2017) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 983

Marketing agreements, Pistachios, Reporting and recordkeeping requirements.

**PART 983 - PISTACHIOS GROWN IN CALIFORNIA, ARIZONA, AND NEW
MEXICO**

Accordingly, the interim rule amending 7 CFR part 983, which was published at 82 FR 49087 on October 24, 2017, is adopted as final, without change.

Dated: March 9, 2018.

Bruce Summers,

Acting Administrator,

Agricultural Marketing Service.

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